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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/494,837 01/31/00 MATHEW

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EXAMINER

AFTERGUT, J

ART UNIT

PAPER NUMBER

1733

DATE MAILED: 09/26/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

**Office Action Summary**

Application No.

09/494,837

Applicant(s)

MATHEW ET AL.

Examiner

Jeff H. Aftergut

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1733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 August 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,8,9,14 and 18-26 is/are pending in the application.
- 4a) Of the above claim(s) 1,8,9,14 and 18-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 102/103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 22-26 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over E.P. 439898 for the same reasons as presented in paper no. 8, paragraph 9.

***Election/Restrictions***

3. Applicant's election with traverse of Group II in Paper No. 9 is acknowledged. The traversal is on the ground(s) that the restriction between the method and the article is not an efficient use of resources for the Patent Office. This is not found persuasive because as expressed in the restriction requirement set forth in paper no. 8, the article could be manufactured by another and materially different process such as one where the fibers were coated with the dispersion prior to the braiding of the same about the tube wherein the process would have resulted in a tube which was not materially physically different from the product claimed.

The requirement is still deemed proper and is therefore made FINAL.

4. Claims 1, 8, 9, 14, 18-21 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 9.

*Response to Amendment*

5. The declaration under 37 CFR 1.132 filed 8-20-01 is insufficient to overcome the rejection of claims 22-26 based upon E.P. 439,898 as set forth in the last Office action because: (1) the declaration is unsigned, and (2) the "single dip" method of the prior art which was compared to the "double dip" technique of this invention was that of U.S. Patent 5,142,782 where the braid was coated after it was applied to the tube with a dispersion and not the technique used to make the tubes of E.P. 439,898 where the material which made up the braid was coated with the dispersion prior to application and braiding about the tube (and thus the comparison is not between the closest prior art and the claimed invention because applicant is comparing the invention to U.S. Patent '782 and not to E.P. '898 (which was the patent used to reject claims 22-26)). A newly submitted signed declaration comparing U.S. Patent '782 to the claimed invention will be considered (i.e. a signed copy of the declaration submitted 8-20-01), **however the submission of a declaration comparing E.P. 439,898 to the claimed invention (where the fibers were coated with the dispersion prior to the braiding of the fibers about the tube as opposed to braiding dry fibers and then coating the braided tube with the dispersion) will not be considered after final as such is not deemed timely.**

*Response to Arguments*

6. Applicant's arguments filed 8-20-01 have been fully considered but they are not persuasive.

The applicant initially is advised that the comparison made in the declaration is not persuasive and evidence of unexpected results because the declaration is comparing U.S. Patent

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5,142,782 to the claimed invention and not comparing the applied reference to the claimed invention (E.P. 439,898). Note that the single dip method which was compared to the double dip method involved the application of the dispersion upon the fibers of the braid after the braid was applied to the tube while the processing employed in E.P. '898 involved the application of the dispersion upon the fibers prior to braiding the fibers about the tube. Thus the comparison made in the declaration does not compare the closest prior art to the claimed invention.

As noted in paper no. 8, it would appear that the processing described by E.P. '898 would have necessarily produced the product as claimed and there appears to be no physical differences between the product of E.P. '898 and the claimed invention herein.

### *Conclusion*

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff H. Aftergut whose telephone number is 703-308-2069. The examiner can normally be reached on Monday-Friday 6:30-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael W. Ball can be reached on 703-308-2058. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3599 for regular communications and 703-305-7718 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
Jeff H. Aftergut  
Primary Examiner  
Art Unit 1733

JHA  
September 25, 2001